2002

Alliant Tech Systems, Inc v. County Board of Equalization of Salt Lake County, and The Utah State Tax Commission : Brief of Respondent

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

ALLIANT TECH SYSTEMS, INC.,	)	
	)	
Petitioner,	)	Case No. 20020904-CA
	)	
v.	)	
	)	Tax Commission Appeal
COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, and THE UTAH STATE TAX COMMISSION,	)	No. 02-1435
	)	
Respondents.	)	

(2)

BRIEF OF RESPONDENT COUNTY BOARD OF EQUALIZATION

PETITION FOR WRIT OF REVIEW OF THE UTAH STATE TAX COMMISSION'S FINAL ORDER IN APPEAL NO. 02-1435

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Respondent, County Board of Equalization of Salt Lake County ("Board") respectfully submits the following brief in response to the brief of the Petitioner, Alliant TechSystems, Inc. ("ATK").

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction over this petition for judicial review filed by ATK pursuant to Utah Code Annotated §§ 59-1-602(1)(a) (2002) and 78-2-2(3)(e)(ii) (2002). The Utah Supreme Court assigned this case to the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2-2(4) (2002).

ISSUES PRESENTED FOR REVIEW

ISSUE 1:

Did the Utah State Tax Commission ("Commission") err when it granted the Board's Motion to Dismiss for lack of Subject Matter Jurisdiction where ATK concedes that it did not file its appeals to the Commission within thirty (30) days after the final action of the Board because ATK's tax representative who received actual notice of the Board's decisions relating to property owned and used by ATK was unfamiliar with Utah procedures and the issues of the case? (R. at 002, 005, Addendum A)

ISSUE 2:

Did the Commission err when it found that the Board complied with the Due Process Clause of the United States and Utah Constitutions and Utah Code Ann. § 59-2-1001(4), where the Board provided actual notice of its decisions to the property owners

of the assessed parcels and did so in the same manner it had for the five prior years that ATK appealed such assessments? (R. at 004; 078, ¶ 7)

ISSUE 3:

Did the Commission err when it found that the Board complied with Utah Code Ann. § 59-2-1001(4), and the Board's Administrative Rules where the Board provided actual notice of its decisions relating to privilege tax assessments to ATK for property owned by the United States, but used by ATK in connection with ATK's for-profit business? (R. at 004)

STANDARD OF REVIEW

In reviewing the Commission's Amended Order, this Court shall grant the Commission deference concerning its findings of fact, applying a substantial evidence standard of review. Utah Code Ann. § 59-1-610(1)(a) (2002). This Court should grant the Commission no deference concerning its conclusions of law, applying a correction of error standard. Utah Code Ann. § 59-1-610(1)(b) (2002).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. Const. amend. XIV, § 1

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law....

Utah Const. art. 1, § 7

> No person shall be deprived of life, liberty or property, without due process of law.

Utah Code Ann. § 59-2-1001(4)(2002).

> The clerk of the board of equalization shall notify the taxpayer, in writing, of any decision of the board. The decision shall include any adjustment in the amount of taxes due on the property resulting in a change in the taxable value and shall be considered the corrected tax notice.

Utah Code Ann. §59-2-1004(5)(2002).

> If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

Utah Code Ann. § 59-2-1006(1)(2002).

> Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

Utah Admin. Code § 861-1A-9(C)(1), (5)(a) (2002).

> A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

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> Decisions by the county board of equalization are final orders on the merits....

Salt Lake County Board of Equalization Administrative Rules § V Hearing (C)(2) (2001).

> All requests for notices to be sent to an address other than that listed on County records for the mailing of the tax notice must be made in writing to the Clerk of the Board.

Salt Lake County Board of Equalization Administrative Rules § VI Resolution (D)(3) (2001).

> The Clerk shall issue a notice of the final decision.
>
> (a) Unless requested otherwise pursuant to V. *Hearing,* C.2, a copy of the final decision shall be sent to the property owner of record, at the current address listed on the County records for the mailing of the tax notice.
>
> (b) The clerk may notify a party or agent of the Board's final decision upon request. Such notification shall be provided according to the procedures established by the Clerk.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

ATK appeals the Amended Order of the Commission granting the Board's Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to rule 12(b)(1) of the Utah Rules of Civil Procedure. The Commission dismissed ATK's appeals of the Board's decisions because the Commission found that it did not have jurisdiction to hear ATK's appeal where ATK filed its appeal of the Board's decisions more than thirty days after

the Board's final action, contrary to the requirements of Utah Code Ann. § 59-2-1006. (R. at 2-6) In dismissing ATK's appeals to the Commission, the Commission rejected ATK's claim that the Board did not comply with the requirements of Due Process, statute, or the Board's Administrative Rules. (R. at 2-6)

II. COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW

ATK appealed to the Board the 2001 valuation of thirty-two real property parcels pursuant to Utah Code Ann. § 59-2-1004(1)(a). (R. at 19, 35 – 36, 53, 55, 60, 86, 88) After a full evidentiary hearing before the Board held on December 20, 2001, the Board issued and mailed notices of the decisions pertaining to thirty of the parcels on April 11, 2002 and notices of the decisions pertaining to two parcels on April 25, 2002. (R. at 2; 7; 9-10; 19-21; 34-36; 60-61; 77, ¶ 3; 86; 88; Addendum A) ATK received actual notice for twenty-nine of these parcels. The Board also mailed notice to the Nuteam Pension and Profit Sharing Plan ("Nuteam") for two parcels as the owner of record, and to Kennecott Utah Copper Corporation ("Kennecott") for one parcel as the owner of record. (R. at 2, 7-10, 19-21, Addendum A)

ATK appealed the decisions of the Board to the Commission pursuant to Utah Code Ann. § 59-2-1006 on July 24, 2002, more than thirty days after the Board's final action. (R. at 2, Addendum A) While conceding that it failed to file an appeal within the statutorily required time period, ATK alleged that the Board failed to give ATK

"adequate notice" and a "meaningful opportunity to be heard" as required by the Utah and United States Constitutions. (Addendum A)

The Board filed a Motion to Dismiss ATK's appeals arguing that the Commission did not have subject matter jurisdiction to accept ATK's appeals because ATK failed to file its notice of appeal to the Commission within thirty days after the Board's final action as required by Utah Code Annotated § 59-2-1006(1). (Addendum A) The Commission granted the Board's Motion to Dismiss for Lack of Subject Matter Jurisdiction in an Order dated October 11, 2002. (R. at 12-17) The Commission entered an Amended Order on October 28, 2002 to clarify a factual issue relating to the number of parcels, but did not change the legal basis of its original decision. (R. at 2-11)

On October 31, 2002, ATK filed a petition for review to the Utah Supreme Court. On December 20, 2002, the Utah Supreme Court transferred this matter to this Court for disposition. (R. at 153-54)

STATEMENT OF FACTS

I. RESPONSE TO PETITIONER'S "STATEMENT OF UNDISPUTED MATERIAL FACTS."

ATK has failed to support its "Statement of Undisputed Material Facts" by citing to the record of the proceedings below as required by Utah R. App. P. 24(a)(7), (e). ATK has also failed to cite any reference or addenda to support its "Statement of Undisputed Material Facts" except for vague references in ¶¶ 4 and 13. Moreover, ATK has included many fact statements that are misleading, not supported by the record, and contradictory

to both ATK's Notice of Appeal (Addendum A) and the Commission's Amended Order Granting Motion to Dismiss.[1] Finally, ATK includes inappropriate legal conclusions in its "Statement of Undisputed Material Facts," which are not supported by the record. Because the Board disputes many of the facts set forth by ATK in its Brief, the Board sets forth its "Statement of Material Facts" in Section II herein.

II. STATEMENT OF MATERIAL FACTS

1. ATK appealed the Salt Lake County Assessor's valuation of thirty-two parcels of real property for the 2001 tax year pursuant to Utah Code Annotated § 59-2-1004 (1). (R. at 007-011; 034; 055; 077, ¶ 3) Pursuant to this appeal, the Salt Lake County Assessor and ATK, through their respective counsel, filed documents, presented evidence, and made legal arguments to the Board on December 20, 2001. (R. at 035-036; 077, ¶ 3)

2. The Board issued its decisions from the December 20, 2001 hearing in April 2002, and mailed notice of the decisions pertaining to thirty of the parcels on April 11, 2002 and the decisions pertaining to two of the parcels on April 25, 2002. (R. at 002-011; 077, ¶ 3; 086; 088; Addendum A) The Board mailed notices of its decisions to the property owners of record, except that the Board mailed notices issued on parcels owned

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[1] Because ATK cited several facts contradicting the findings of the Commission, ATK has an obligation to "'marshal all the evidence supporting the findings of fact and show that despite the supporting facts, and in light of the conflicting evidence, the findings are not supported by substantial evidence.'" Beaver County v. Wiltel, Inc., 2000 UT 29, ¶ 16, 995 P.2d 602 (quoting Salt Lake City Southern R.R. Co. v. State Tax Comm'n, 987 P.2d 594, 598 (Utah 1999)).

by the federal government, on which the Salt Lake County Assessor assessed a privilege tax to ATK under Utah Code Annotated § 59-4-101, to ATK. (R. at 002; 077, ¶ 4; Addendum A) The privilege tax assessed to ATK was a tax on ATK's "possession or other beneficial use" of the federal government's property, and not on the property itself. (R. at 2, fn. 3; Utah Code Annotated § 59-4-101 (2002)).

3. Contrary to ATK's statement of undisputed material facts, (ATK's Statement of Facts ¶¶ 2, 10), the Commission found that for property tax purposes, the "taxpayer" is the party who is legally liable for the tax and that the person who is legally liable for the tax is the property owner. (R. at 004) There is no genuine dispute as to whether the property owners received the Board's notices of decision. (R. at 002, Addendum A)

4. The Board sent notices of its decisions to the same locations for the 2001 appeal as it had for the 1995-2000 ATK appeals. (R. at 005; 078, ¶ 7) This is consistent with the Board's petition form filled out by ATK, which provides that "[a]ll Notices of Decision will be mailed to the Owner of Record when issued." (R. at 055 (backside); ATK Addendum C) Notice of the Board's decisions are essentially corrected tax notices. (R. at 005, Utah Code Annotated § 59-2-1001(4)(2002))

5. ATK did not request that the Board notify its legal counsel of the Board's 2001 decisions, as required by the Board's Administrative Rules. (R. at 005; 078, ¶¶ 6-8; Addendum B) Had ATK asked the Board to send its legal counsel a copy of the Board's

decisions, the Clerk of the Board would have done so to the extent such request complied with the Board's Administrative Rules. (R. at 078, ¶ 6; Addendum B)

6. ATK's former tax representative, Mr. Robert Berg, who filed the original appeals and who performed similar functions for the five previous years, retired before the Board issued its decisions for the 2001 tax year. The department in which Mr. Berg worked was restructured and the person succeeding to Mr. Berg's responsibilities was unfamiliar with Utah procedure and the issues of the case. The individuals at ATK's corporate headquarters failed to act on the Board's decisions. (R. at 005, Addendum A)

7. Contrary to ATK's description of its attorney as its "Board-required agent," (ATK Statement of Undisputed Material Facts ¶¶ 4, 6-9, 11-12, 15), the Board does not require that taxpayers have an agent, but it does require "additional agent or representative information" if the taxpayer has an agent or representative. (R. at 055 (backside); ATK Addendum C) The Commission did not make a finding that the Board "requires" an agent. (R. at 002-006)

8. The Board's notification that all decisions "will be mailed to the Owner of Record when issued" is located on the backside of the Board's petition form in the paragraph describing the taxpayer's obligation to authorize an agent to act on its behalf. (R. at 055 (backside), ATK Addendum C) ATK's tax representative, Robert Berg, signed and filed ATK's appeals to the Board for the 2001 tax year. (R. at 55, Addendum A) Contrary to ATK's statement of facts, (ATK's Statement of Facts ¶ 2), all decisions pertaining to parcels of property owned by ATK were mailed to ATK's corporate offices,

(R. at 004, Addendum A), but the tax representative failed to act on the decisions. (R. at 005, Addendum A)

9. ATK's legal counsel eventually discovered that the Board had issued its decisions and filed appeals from those decisions on July 24, 2002. (R. at 002, Addendum A)

10. ATK filed its appeals to the Board's decisions more than thirty days after the Board's final action. (R. at 002, Addendum A)

11. After receiving notice of ATK's appeals of the Board's decisions, the Board filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction with the Commission on September 3, 2002. The Board asked the Commission to dismiss ATK's appeals for lack of subject matter jurisdiction because ATK failed to appeal the Board's decisions within thirty days of the Board's final action. (R. at 56-102)

12. By Amended Order dated October 28, 2002, the Commission granted the Board's Motion to Dismiss for Lack of Subject Matter Jurisdiction because ATK failed to appeal the Board's decisions within thirty days of the Board's final action. (R. at 2-6)

SUMMARY OF ARGUMENT

The Commission did not err when it granted the Board's Motion to Dismiss ATK's appeal of the Board's decisions for lack of subject matter jurisdiction. Utah Code Ann. § 59-2-1006(1) requires a dissatisfied taxpayer to appeal "within 30 days after the final action of the county board." Failure to timely perfect an appeal is a jurisdictional

failure requiring dismissal of such appeal. ATK concedes that it did not file its appeals of the Board's decisions within the required time period; therefore, the Commission lacks jurisdiction to hear ATK's appeals. ATK's contention that it had recently replaced its longtime property tax representative at its corporate offices is not a sufficient reason to allow the Commission to take jurisdiction over an untimely filed appeal.

While ATK concedes that it did not timely perfect its appeal under section 59-2-1006(1), it has argued that the Board failed to provide ATK with "adequate notice" and "an opportunity to be heard" as required by the Due Process Clause of the Utah and United States Constitutions. The Board provided ATK with "adequate notice" because it mailed, and ATK received, actual notice of the Board's decisions for twenty-nine of the thirty-two applicable parcels. The Board also mailed notices of its decisions for three parcels owned by Kennecott and Nuteam as the taxpayers of record, consistent with Salt Lake County records. ATK has failed to cite a single case in which a party who provided actual notice to a due process claimant was found to have deprived such claimant of his or her due process rights.

ATK also argues that the Board deprived it of due process because it failed to notify ATK's legal counsel of its decisions. However, due process concerns do not arise unless the affected taxpayer did not receive notice. ATK's argument that its legal counsel acted as its agent, thereby requiring that the Board send notice to its legal counsel and not to ATK as the "taxpayer," asks this Court to replace the statutory framework set forth by the Utah Legislature in Part 10 of the Property Tax Act with unsupported

principles of agency law. This argument also ignores the traditional dealings between the Board and ATK because the Board had sent notice to ATK for the 2001 tax year consistent with the way it had sent notice for the several years prior that ATK had appealed. This also contradicts the plain instructions on the Board's appeal form that the Board would mail notices of its decision to the owner of record when issued.

ATK also cited several distinguishable cases authored by the United States Supreme Court to support its due process argument. However, each of these cases involved notice by publication or posting, and involved claimants who did not receive actual notice of the relevant action. In this case, ATK did receive "actual notice" of the Board's actions that affected its property; thus, these cases are distinguishable from this case. ATK also cited a distinguishable Utah Supreme Court case, in which the court held that the notice itself failed to specifically identify the charges against the aggrieved party. Unlike that case, however, the Board clearly explained in its notices the action taken, and clearly set forth ATK's rights to appeal such action to the Commission. Thus, the Board gave ATK an "opportunity to be heard" when it provided "actual notice" to ATK and the other property owners of record of its decisions.

ATK also claimed that the Board violated section 59-2-1001(4) when it sent notice of its decisions relating to three parcels to Nuteam and Kennecott instead of to ATK and its legal counsel. Section 1001(4) requires the Board to send notice of its decisions to the "taxpayer." The "taxpayer" is the person ultimately responsible to pay the tax, which, in Utah, is the owner of record. Under the Property Tax Act, if delinquent taxes are owed

on a parcel of real property, the county's remedy is to sell the property for the amount of taxes, interest, and penalties owed, even if the original assessment was on an improvement to real property owned by somebody other than the underlying property owner. Principles of statutory construction and case law support the Commission's interpretation that, for property tax purposes, the owner of property is the "taxpayer" because the owner is the person ultimately responsible to pay the tax.

ATK also argues that the Board violated its own rules when it sent notice of five privilege tax assessments to ATK, as the "taxpayer," for its possession or other beneficial use of property owned by the federal government. The Board's rules require that it send notice of its decisions to the property owner. Even if the Board's rules did contradict the statutory requirement that the Board send notice to the "taxpayer," the Board complied with the statute because it sent notice to ATK, the "taxpayer." However, because the assessed tax reflected ATK's "possession or other beneficial use" of the federally owned property, the Board did send notice to the "owner" because the tax was on ATK's interest in the property and not on the property itself.

ARGUMENT

POINT I

BECAUSE ATK DID NOT SUPPORT ITS STATEMENT OF MATERIAL FACTS WITH CITATIONS TO THE RECORD, THIS COURT SHOULD DISREGARD SUCH STATEMENT OF FACTS AND ASSUME THE CORRECTNESS OF THE JUDGMENT BELOW.

As noted in the Board's Response to ATK's "Statement of Undisputed Material Facts," ATK failed to cite to facts supported by the record. The Utah Rules of Appellate Procedure provide that "[a]ll statements of fact and references to the proceedings below shall be supported by citations to the record .... Utah R. App. P. 24(a)(7). "References shall be made to the pages of the original record as paginated ... or to pages of any statement of the evidence or proceedings prepared pursuant to Rule 11(f) or 11(g)." Utah R. App. P. 24(e). Moreover, "[b]riefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court ...." Utah R. App. P. 24(j).

This Court stated that "[i]f a party fails to make a concise statement of facts and citation of the pages in the record where the facts are supported, the court will assume the correctness of the judgment below." Koulis v. Standard Oil Co., 746 P.2d 1182, 1184 (Utah Ct. App. 1987)(disregarding appellant's brief and assuming correctness of judgment below where breach of contract claimant/appellant failed to include citations to record for factual allegations in brief other than several general references to lease agreement); Steele v. Bd. of Review of Indus. Comm'n, 845 P.2d 960, 962 (Utah Ct. App. 1993)(granting respondents' motion to Strike and affirming dismissal of workers compensation claim where claimant's brief did not contain citations to record in statement of case, statement of facts, or argument section). This Court also stated in Koulis that "'[t]his Court need not, and will not, consider any facts not properly cited to, or supported by, the record.'" Koulis, 746 P.2d at 1184 (quoting Uckerman v. Lincoln Nat'l Life Ins. Co., 588 P.2d 142, 144 (Utah 1978)).

ATK failed to support its brief by citing to the record to support its statement of the case and its "statement of undisputed material facts." Moreover, ATK's statement of facts contains legal conclusions and facts not supported by the record, which are not helpful in assisting this Court to dispose of this matter. For these reasons, the Board respectfully requests that this Court assume the correctness of the Commission's judgment below and disregard ATK's statement of undisputed material facts. Koulis, 746 P.2d at 1184.

POINT II

BECAUSE ATK FAILED TO APPEAL THE BOARD'S DECISIONS WITHIN THIRTY DAYS OF THEIR RELEASE, THE TAX COMMISSION DID NOT ERR IN DETERMINING THAT IT DID NOT HAVE SUBJECT MATTER JURISDICTION TO CONSIDER ATK'S APPEALS.

The Commission correctly dismissed ATK's appeals of the Board's decisions because ATK did not appeal the Board's decisions "within 30 days after the final action of the county board." Utah Code Ann. § 59-2-1006(1) (2002). The Utah Supreme Court has held that "[i]t is axiomatic in this jurisdiction that failure to timely perfect an appeal is a jurisdictional failure requiring dismissal of the appeal." Prowswood, Inc. v. Mountain Fuel Supply Co., 676 P.2d 952, 955 (Utah 1984)(holding that failure to pay docketing fee within requisite period constitutes jurisdictional defect); Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 571 (Utah Ct. App. 1989)(dismissing appeal before Industrial Commission where appellant filed appeal two days after statutory time limit);

Dusty's Inc. v. Auditing Division of the Utah State Tax Comm'n, 842 P.2d 868 (Utah 1992)(finding taxpayer's petition for judicial review untimely when filed more than 30 days after order constituting final agency action was issued).

Furthermore, "'the initial inquiry of any [administrative body] should always be to determine whether the requested action is within its jurisdiction.' Without subject matter jurisdiction, the court or agency lacks the power to do anything beyond dismissing the proceeding." Blaine Hudson Printing v. Utah State Tax Comm'n, 870 P.2d 291, 292 (Utah Ct. App. 1994)(holding that Commission did not have jurisdiction to consider appeal from County Commission's decision that Assessor did not illegally or erroneously collect personal property taxes)(internal citations omitted)(inserted brackets in original).

ATK concedes in its notice of appeal that it did not file its appeals within the required time period. (Addendum A) Therefore, the Commission correctly dismissed ATK's appeals for lack of subject matter jurisdiction. For the reasons stated herein, the Board respectfully requests that this Court uphold the Commission's amended order granting the motion to dismiss ATK's appeals of the Board's decisions.

POINT III

BECAUSE THE BOARD GAVE ATK AND THE *OWNERS OF RECORD ACTUAL NOTICE OF THE* BOARD'S DECISIONS, THE COMMISSION DID NOT ERR IN FINDING THAT THE BOARD COMPLIED WITH DUE PROCESS AND UTAH CODE ANN. § 59-2-1001(4).

The Commission did not err when it ruled that the Board satisfied its constitutional and statutory notice requirements when it provided actual notice to ATK, Kennecott, and Nuteam, as the "taxpayers" of record for thirty-two parcels of real property. The Due Process Clause of the United States and Utah Constitutions provides, in pertinent part, that no person shall be deprived of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; Utah Const. art. 1, § 7. In interpreting the Due Process Clause, the United States Supreme Court stated that to satisfy due process, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950).

Moreover, notice must "be of such nature as to reasonably convey the required information ... and it must afford a reasonable time for those interested to make their appearance.... But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied." Id. at 314-315.

ATK takes the extreme position that the Board deprived it of due process even though it received actual notice of the great majority of the Board's decisions. ATK fails to cite one case in all of due process jurisprudence in which a governmental body deprived a person or entity of due process when such person or entity received actual notice. The Board not only provided "notice reasonably calculated, under all the

circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections," as required by Mullane, but the Board provided actual notice to ATK for twenty-nine of the thirty-two parcels, and it mailed notice to the other property owners for the other three parcels. There is no dispute that the Board mailed notice for these three parcels to the property owners of record. (R. at 002; 077, ¶ 4)

Despite receiving actual notice, ATK argues that the Board violated its due process rights because it failed to send notice to ATK's attorney. The Colorado Court of Appeals rejected an identical argument in Tri-Havana Limited Liability Co. v. Arapahoe County Bd. of Equalization, 961 P.2d 604 (Colo. Ct. App. 1998). In that case, like this one, "it was undisputed that the taxpayer had been acting through a designated agent at each level of the administrative proceedings." Id. at 605. Also like this case, "notice of the BOE's decision was not mailed to the agent but was timely mailed to taxpayer at taxpayer's address of record. Subsequently, the agent reviewed the BOE files, found the notice, and immediately filed taxpayer's petition with the [Colorado equivalent of the Tax Commission]." Id. In rejecting the same due process argument made by ATK in this case, that the Board had a due process requirement to notify a taxpayer's attorney, the Colorado Court of Appeals stated that "although due process concerns may arise if a taxpayer fails to receive a mailed notice, it was undisputed that taxpayer was in actual receipt of the notice of the decision issued by the BOE." Id. at 606 (citation omitted).

Moreover, the Board mailed notices of its 2001 decisions to the same place and in the same manner it had sent its decisions related to ATK's appeals for the 1995 – 2000

tax years, without objection from ATK. (R. at 078, ¶ 7) Because the Board had successfully notified ATK of its decisions for the six previous tax years using the same method it used for the 2001 tax year, the Board's "chosen method may be [constitutionally] defended on the ground that it is in itself reasonably certain to inform those affected." Mullane 339 U.S. at 315. The notice that ATK actually received clearly indicated that ATK had thirty days to appeal the Board's decision to the Commission and explained the method for filing such an appeal. (R. at 086, 088) Thus, because ATK received actual notice of the Board's decisions, and an opportunity to appeal such decisions to the Commission, the Board did not deny ATK of its due process rights.

Moreover, ATK relies on unsupported principles of agency law to argue that the Board had a legal obligation to notify its legal counsel of its decisions contrary to statute, the procedures set forth in administrative rule, Salt Lake County Board of Equalization Administrative Rules § VI Resolution (D)(3) (2001), and the Board's application form, which provided that "All Notices of Decision will be mailed to the Owner of Record when issued." (R. at 55 (backside)) ATK fails to explain why principles of agency law found in a legal encyclopedia should trump the statutory framework set forth by the Utah Legislature.

ATK relies on three United States Supreme Court cases to argue that the Board failed to provide ATK with "notice" and a "meaningful opportunity to be heard" as required by due process. Mullane, 339 U.S. at 313; Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S.Ct. 1340 (1988); Mennonite Board of

Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706 (1983). The facts of these three cases are distinguishable from the facts of this case.

Mullane involved a proceeding by a bank acting as trustee of a special trust account created under New York law. Mullane, 339 U.S. at 308-310. The Mullane court found unconstitutional a statute that allowed notice of a judicial settlement to the beneficiaries involving such trust by publication in a local newspaper. The Mullane court noted that "[i]t would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts." Id. at 315. The Pope court held in pertinent part that "if [an aggrieved party's] identity ... was known or 'reasonably ascertainable,' then the Due Process Clause requires that [such party] be given 'notice by mail or other means to ensure actual notice.'" 485 U.S. at 491. (citing Mennonite, 462 U.S. at 800)(insertions added). Like the Mullane court, the Pope court invalidated a state statute allowing notice by publication. In both of these cases, the aggrieved parties failed to receive "actual notice" of state action affecting potential claims.

In Mennonite, the Court invalidated a state statute that permitted a tax sale of property, on which a mortgagee held a mortgage, with notice by publication, posting, and by certified mail to the property owner, but not too affected mortgagees. 462 U.S. at 793. The Mennonite court found that "[n]either notice by publication and posting, nor mailed notice to the property owner, are means 'such as one desirous of actually informing the

[mortgagee] might reasonably adopt to accomplish it.'" 462 U.S. at 799 (quoting Mullane, 339 U.S. at 315)(brackets in original).

This case does not involve notice by posting or publication in a newspaper, like those cited by ATK. In this case, ATK received "actual notice" of the Board's decisions for property owned by ATK because the Board mailed notice of its decisions, which related to twenty-nine parcels, to ATK's corporate offices as it had for the past several years. It is also undisputed that the Board mailed notice of its decisions, which related to the remaining three parcels, to Kennecott and Nuteam, the owners of record, as it had for the past several years. These notices informed the recipients that they had thirty days to appeal the Board's decisions, thus giving ATK "an opportunity to be heard" before the values on the subject parcels became final.

ATK also cited In Re Worthen to support its claim that the Board violated its due process rights. 926 P.2d 853 (Utah 1996). In that case, the Utah Supreme Court observed that an order of the Judicial Conduct Commission ("JCC") did not contain the requisite findings of fact and conclusions of law to sufficiently apprise the accused of his wrongdoing. Id. at 872. The Worthen court found that the notice itself did not comply with the JCC's own rules because the notices did not identify the specific issues to be addressed at the hearing. Id. at 877. The notices in this case have no such defect. (R. at 086, 088) The notices in this case show that the Board did not adjust the fair market value of a subject parcel as requested by ATK, that ATK may appeal the denial of adjustment to the Commission, and gave instructions as to how to file its appeal.

Because these notices clearly set forth the issues related to this tax dispute, this case is distinguishable from Worthen.

ATK also argues that the Board violated Utah Code Ann. § 59-2-1001(4) by sending notice on three parcels to Nuteam (for two parcels) and Kennecott (for one parcel) and not to ATK as the "taxpayer." As stated by the Commission in its Order, "[t]he 'taxpayer' is the party who is legally liable for the tax. The person who is legally responsible for the tax is the property owner." (R. at 004) Utah Code Ann. §§ 59-2-303(1), 913(4), 1302(1)-(2), 1303 (2002). While ATK may have a private contractual agreement to pay the tax, requiring the Board to track such private contractual agreements would impose an impractical administrative burden not contemplated by statute or rule.

Moreover, "[a] tax due upon improvements upon real property assessed to a person other than the owner of the real property is a lien upon the property and improvements." Utah Code Ann. § 59-2-1325 (2002). If taxes become five years delinquent, except in limited circumstances, the county auditor shall sell the assessed property pursuant to statute. Utah Code Ann. §§ 59-2-1343, 1351, 1351.1 (2002). Thus, because the statutory remedy is imposed against the owner's property interest, it makes sense that the legislature would require notice to the person or entity ultimately responsible for the tax, the owner of record.

ATK sets forth several principles of statutory construction to support its position that the Board violated Utah Code Ann. § 59-2-1001(4) when it mailed its decisions for

three parcels to Kennecott and Nuteam. First, ATK argues that the Commission failed to interpret § 59-2-1001(4) according to its plain and ordinary meaning. (ATK Brief at 18-19) ATK refers to, without citing, hundreds of cases, which "ATK has reviewed" that supports the contention that the "taxpayer" is the person "paying a legally assessed tax." (Id. at 19) ATK's failure to cite authority to support its position on this point makes it difficult for the Board to address this argument and is in violation of rule 24(a)(9) of the Utah Rules of Appellate Procedure, which provides in pertinent part that arguments shall include "citations to the authorities, statutes, and parts of the record relied on."[2] Notwithstanding this shortcoming, the Board's review of Utah Cases did not reveal a case in which the term "taxpayer" was affirmatively defined for property tax purposes as implied by ATK.

ATK also cites the dictionary definition of taxpayer to support its contention that ATK and its designated agent should have received notice for property owned by Kennecott and Nuteam, and leased by ATK. (ATK Brief at 19) ATK's dictionary definition supports the Board's contention that it sent notice for the three parcels owned by Nuteam and Kennecott because, as the owners of the property, these entities are "liable for the tax." (Id.) This plain language definition is also consistent with the statutory provisions above, thereby rendering the Commission's statutory interpretation

[2] Because ATK failed to cite to the legal authority referred to on page 19 of its brief, the Board asks that this Court disregard that argument. Coleman v. Stevens, 2000 UT 98, ¶7, 17 P.3d 1122 (stating that reviewing court will not address arguments not adequately briefed and that "[f]ailure to provide any analysis or legal authority constitutes inadequate briefing").

consistent with the principle of statutory construction that the meaning of a word must be interpreted within the context that it is used. State v. In, 2000 UT App 358, ¶ 5, 18 P.3d 500 (holding defendant constituted a 'convicted' felon where such defendant pleaded guilty to an offense, but had not yet been sentenced and judgment of conviction had not yet been entered).

For purposes of the three parcels owned by Kennecott and Nuteam, the Commission's definition of "taxpayer" is consistent with the structure and context of the property tax collection system, which requires that counties sell the property of the owner if real or personal property taxes are not paid. Utah Code Ann. §§ 59-2-1301, 1302, 1303, 1343, 1351.1 (2002). Kennecott and Nuteam were the "taxpayers" for purposes of this assessment because if ATK failed to pay the tax for five years, Kennecott and Nuteam's property would have been sold. Utah Code Ann. § 59-2-1325 (2002).

ATK also argued that the plain language of the statute required the Board to mail notice to ATK's "designated agent." (ATK Brief at 19) Section 59-2-1001(4) requires that the Board mail notice to the "taxpayer" and does not require that notice be sent to an agent. The Board's rules allow for an agent to receive notice if requested (Addendum B), but neither Kennecott, nor Nuteam, nor ATK requested that the Board send notice to ATK's agent in this case. The Board sent notice of its decisions, which essentially amounts to amended tax notices, to the taxpayers and owners of record consistent with statute and its own rules. Utah Code Ann. §59-2-1001(4) (2002).

ATK's second argument that the Commission's interpretation is not consistent with principles of statutory construction is that such definition is inconsistent with other binding property tax statutes. ATK states, "... the Tax Commission cites a laundry list of other property tax statutes to the effect that property is assessed to the owner. That is generally, but not always, true." (ATK Brief at 20) ATK then relies on Crossroads Plaza Ass'n v. Pratt to support its assertion that someone other than the owner of underlying property may be responsible to pay a tax. 912 P.2d 961 (Utah 1996). The Board does not dispute, and the Commission decision contemplates, that non-owners may be responsible to pay a tax because of private contractual and other arrangements. (R. at 004) See Utah Code Ann.§ 59-2-1303 (allowing assessor to assess "owner, claimant of record, or occupant in possession or control). The issue, however, is not whether ATK had a contractual agreement to pay the tax, but whether the Board denied ATK of its due process rights when it mailed notices of its decisions to Nuteam and Kennecott for property owned by Nuteam and Kennecott, and leased by ATK. A detailed analysis of Pratt supports the Commission's decision that the Board complied with statute when it mailed notice to Nuteam and Kennecott as the parties ultimately responsible for the taxes assessed to that property.

In Pratt, a corporate taxpayer sought declaratory and injunctive relief to prohibit the county assessor from attaching a lien on the corporate taxpayer's real property arising from the failure of the corporate taxpayer's tenant to pay taxes on the tenant's leasehold improvements. 912 P.2d at 963. The trial judge entered summary judgment in favor of

the corporate taxpayer on the theory that an administrative rule requiring leasehold improvements to be assessed, and allegedly treated for collection purposes, as personal property trumped section 59-2-1325, which provided that a tax upon "improvements" is a lien upon the underlying property. Id.

While the Pratt court recognized, like the Commission in this case (R. at 004), that "the legislature contemplated that a tax on improvements might be assessed to someone other than the owner of the underlying property," 912 P.2d at 965, the court also determined, in interpreting section 59-2-1325 that "a tax due on improvements to real property is a lien on that property regardless of whether the local assessor may assess the tax to the lessee in control of the improvements." Id. at 966. The Pratt court ultimately held that "Crossroads, as the owner of the property underlying [the Tenant's] leasehold improvements, is responsible for unpaid taxes on such improvements." Id. at 969 (insert added). Contrary to ATK's argument and consistent with the Commission's decision, Pratt supports the proposition that it is ultimately the owner who "is responsible for unpaid taxes" on improvements, and not the party who contractually agreed to pay the tax. Thus, section 1325 may be added to the Commission's "laundry list" of property tax statutes that support the proposition that the "owner" is the party ultimately liable to pay taxes on improvements to that owner's real property.

ATK further argues that because Section 59-2-1004 includes both the word "owner" and "taxpayer," the Commission erred when it found that the Board sent notice to the "taxpayer" when it mailed notice to Nuteam and Kennecott for parcels those parties

owned. As argued above, because Nuteam and Kennecott would ultimately be responsible to pay the tax under the Property Tax Act, Nuteam and Kennecott certainly qualify as "taxpayers" even under ATK's cited definition for the three parcels to which this argument applies, that a "taxpayer" is one liable for a tax.

ATK also relies on its participation in prior year appeals to support its position that the Board violated § 59-2-1001(4) when it failed to notify ATK of its 2001 decisions relating to the three parcels owned by Nuteam and Kennecott. (ATK Brief at 22-23) During those prior year appeals, however, the Clerk of the Board sent all notices of decision to the "taxpayer" of record, in this case Nuteam and Kennecott, as listed on Salt Lake County's real property records. (R. at 078, ¶ 8) While acknowledging that ATK had a private contractual obligation to pay the taxes on these three parcels,[3] the Board has consistently treated Kennecott and Nuteam as the "taxpayers" for notice purposes, without complaint from ATK.

Third, ATK argues that "statutes, to the extent of any ambiguity, must be construed liberally in favor of the taxpayer and against the taxing authority." (ATK Brief at 23) While this may be true, ATK failed to identify any ambiguity in Section 59-2-1001(4) to trigger the use of this rule of statutory construction. ATK never argued that Kennecott and Nuteam did not qualify as "taxpayers" under its interpretation of the statute, but argued that it, too, had an obligation to pay taxes by contract or otherwise. As

[3] The Tax Commission raised the question of whether ATK, as lessee, had standing to appeal Kennecott's and Nuteam's assessment without authorization, but found it beyond the scope of this case. (R. at 004)

stated by the Commission, however, the Board "is under no obligation [statutorily or otherwise] to track private contractual arrangements, and it has no authority to send tax notices or appeal decisions (which are essentially amended tax notices) to any lessee who obligates itself for payment of taxes." (R. at 005)(bracketed insertion added, parenthetical in original) ATK has not identified any statutory provisions that would obligate the Board to track private contractual obligations for notice purposes. Thus, the Board complied with Section 59-2-1001(4) when it sent notice of its decisions for three parcels owned by Kennecott and Nuteam, as the taxpayers of record, to those parties.

For these reasons, the Board respectfully requests that this Court uphold the decision of the Commission that the Board complied with the Due Process Clause and Utah Code Annotated § 59-2-1001(4) when it mailed notice to ATK for parcels owned by ATK, to Nuteam for parcels owned by Nuteam, and to Kennecott for the parcel owned by Kennecott. The Board further requests that this Court uphold the Commission's decision that the Board complied with § 59-2-1001(4) when it sent notice to ATK, as the "taxpayer" under the privilege tax, for its "possession or other beneficial use" of property owned by the federal government.

POINT IV

BECAUSE THE COUNTY ASSESSOR IMPOSED A PRIVILEGE TAX ON ATK'S POSSESSION OR OTHER BENEFICIAL USE OF FEDERAL PROPERTY, THE COMMISSION DID NOT ERR IN FINDING THAT THE BOARD COMPLIED WITH UTAH CODE ANNOTATED § 59-2-1001(4) WHEN THE BOARD MAILED ITS DECISIONS TO ATK AND NOT THE FEDERAL GOVERNMENT.

The Board did not violate statute or its own rules when it sent notice of its decisions to ATK for assessments on ATK's "possession or other beneficial use" of federal property. Utah Code Ann. §59-4-101(1)(a) (2002). The administrative rule at issue provides in pertinent part that "[a] copy of the final decision shall be sent to the property owner of record, at the current address listed on the County records for mailing of the tax notice." Salt Lake County Board of Equalization Administrative Rules § VI Resolution (D)(3) (2001). (Addendum B)

ATK argues that the Board's rules are inconsistent with § 59-2-1001(4) because the "taxpayer" must receive notice, and not the "owner." ATK stated that "[t]he Board should have followed the statute, and not its own inconsistent procedures, and provided actual, written notice of its April 11, 2001 decisions on all parcels to ATK ...." (ATK Brief at 31) The Board did send ATK, as the "taxpayer," actual notice for all five of the parcels subject to a privilege tax, consistent with statute. Even if the Board's rule were inconsistent with the statute, the Board properly followed the statute by sending the

privilege tax notices to ATK as the "taxpayer," consistent with what ATK states the Board "should have" done. (ATK Brief at 30-31)

Moreover, because the privilege tax assessments at issue pertain to ATK's "possession" or "use" of property, and not on the property itself, the Board did send notice to the "owner" of the assessed interest (i.e. ATK's "possession" of the federal property), consistent with the Board's rules and with statute. Utah Code Ann. §59-4-101(1)(a) (2002). It is not clear whether ATK is asking this Court to void the Board's rule, or to require the Board to send notices to the United States Navy on the five privilege tax parcels. If ATK is asserting that the Board violated the Navy's due process rights by not sending it notice, ATK does not have standing to assert the Navy's constitutional rights. See Shelledy v. Lore, 836 P.2d 786, 789 (Utah 1992)(finding that "[t]he general rule is that a litigant 'must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties'") (citation omitted). In either event, the Board respectfully requests that this Court reject ATK's argument that it violated its own rules and uphold the Commission's Motion to Dismiss for lack of subject matter jurisdiction.

CONCLUSION

Because ATK failed to file its appeals within thirty days of the Board's final action, and because the Board gave actual notice to ATK of the Board's decisions, the Board respectfully requests that this Court upheld the Commission's Amended Order granting the Board's Motion to Dismiss ATK's appeals for lack of subject matter

jurisdiction. Moreover, because ATK is the "taxpayer" of the privilege tax assessed on its possession or beneficial use of federal property, the Board requests that this Court uphold the Commission's Order that the Board complied with statute and administrative rule in sending notice to ATK for the Board's decisions concerning those parcels. Finally, the Board requests that this Court disregard ATK's Brief to the extent ATK failed to cite to the record in support of its statement of facts, and to disregard those legal arguments unsupported by analysis and case law.

RESPECTFULLY SUBMITTED this 21st day of April, 2003.

DAVID E. YOCOM
Salt Lake County District Attorney

Jason S. Rose
MARY ELLEN SLOAN
Deputy District Attorney
JASON S. ROSE
Deputy District Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed, via first class mail, a true and correct copy of the foregoing Brief of Respondent/Appellee Board of Equalization of Salt Lake County to the following, postage prepaid, this 21st day of April, 2003.

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ADDENDUM
A

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02-1435

July 19, 2002

RECEIVED
JUL 2 2002
APPEALS SECTION

Craig B. Sorensen
Salt Lake County Auditor
2001 South State - N3300
Salt Lake City, UT 84190-1100

Re: Notice of Appeal
Alliant Techsystems, Inc.
Board of Equalization Decision, April 11. 2002

Dear Mr. Sorensen:

Attached are the Notices of Appeal for each of the respective parcels involved in the Board of Equalization (the "Board") Decision issued April 11, 2002. Petitioner Alliant Techsystems, Inc. ("Petitioner") acknowledges that the "final decision," from which its appeal is taken to the Utah State Tax Commission, is dated April 11, 2002, and that, pursuant to Utah Code Ann. § 59-2-1006(1), the statutorily prescribed period for an appeal is "within 30 days after the final action by the county board" or by May 13, 2002.

Petitioner did not file an appeal by May 13, 2002. However, this statutorily prescribed period is necessarily subordinate to binding constitutional "due process" that Amendment XIV of the United States Constitution and Article 1, Section 7 of the Utah Constitution guarantees, respectively, to citizens of the United States and Utah. As defined by the Utah Appellate Courts, "due process is flexible and, being based on the concept of fairness, should afford the 'procedural protections that the given situation demands.'" *In re Worthen*, 926 P.2d 853, 876 (Utah 1996) (quotations omitted); see also *Rupp v. Grantsville City*, 610 P.2d 338, 341 (Utah 1980). The minimum requirements are adequate notice and an opportunity to be heard in a meaningful manner. See *V-1 Oil Co.*, 939 P.2d at 1197; *Worthen*, 926 P.2d at 876; *Lindon City v. Engineers Constr. Co.*, 636 P.2d 1070, 1075 (Utah 1981).

Under the circumstances, Petitioner did not receive "adequate notice" and a "meaningful opportunity" to appeal the Board's decision for the following reasons:

- The Board's "General Instructions" to "property owners" (copy attached as Exhibit A) state that the name, address and telephone number of the taxpayer's "additional agent or representative" is "required." As shown in Exhibit A, the undersigned is clearly identified as the taxpayer's agent. Yet the Board sent notice of its final decision on most parcels to

Petitioner's corporate headquarters, notwithstanding its own requirement that Petitioner list a local agent. Further, Petitioner's undersigned agent filed pleadings, documents and other correspondence with the Board, and appeared and presented evidence and argument at the Board's hearing on December 20, 2001. Yet no notice of the Board's final decision was provided to the undersigned as the "required agent."

The Board sent other notices to "The United States of America" in care of Petitioner at is corporate headquarters. Petitioner is not the "owner" of such parcels to whom these notices should have been sent under the Board's own rules. It is not clear why the Board chose to notify Petitioner, presumably as agent for the "owner," the United States of America, but not notify Petitioner's counsel as agent for Petitioner. Such disparate treatment makes no sense.

Moreover, Petitioner has never received notice from the Board of a final decision on four other parcels whose assessments Petitioner appealed to the Board. One of the four parcels lists "Kennecott Utah Copper Corporation" as the owner to whom notice was sent. The assessed value on this parcel is $102,281,500, which was adjusted to $99,184,600. Petitioner does not know whether Kennecott ever received notice on this parcel. Petitioner does know, however, that Kennecott did not notify Petitioner or its local counsel of any notice that it may have received. Finally, the Board sent notice on two of the parcels Petitioner appealed to "Nuteam Pension and Profit Sharing Plan." To this day, the undersigned and designated "required" agent has not received notice of the Board's decision from the Board on any parcel.

- Petitioner's prior tax representative, Mr. Robert Berg, who filed the appeal of the Salt Lake County Assessor's 2001 tax assessment of the parcels at issue with the Board, and who performed similar functions over the past five years, retired before the Board issued its April 11, 2002 decision. The department in which Mr. Berg worked was restructured and the person succeeding to Mr. Berg's responsibilities was unfamiliar with Utah procedure and the issues of the case. The individuals at corporate headquarters assumed that a copy was also sent to Petitioner's identified agent since that is the practice in other states in which Petitioner conducts operations, and because the Board required the listing of a local agent.

Moreoever, there is a long history of Petitioner's tax appeals from the Board's decisions going back at least to 1995 with which the Board and its counsel are intimately familiar, including the name and address of Petitioner's local counsel. The name of Petitioner's counsel was prominently displayed on all pleadings that Petitioner filed with the Board. Yet neither the Board nor its counsel notified Petitioner's local counsel of the decision. Instead, the Board sent notice of its April 11, 2002 decision on most parcels to "Alliant Techsystems, Inc. c/o Tax Dept. MN01-3090, 5050 Lincoln Dr., Edina MN." Petitioner believes that such a nondescript notice to corporate headquarters without

additional notice to those individuals specified on the pleadings is "inadequate" under the circumstances, and does not fairly inform Petitioner of the Board's decision so that "meaningful" action can be taken.

- Petitioner's local counsel did not receive actual notice of the Board's April 11, 2002 decision on any parcel from any source until July 16, 2002. Being concerned that he had heard nothing from anyone with respect to 2001 assessment appeal, Petitioner's local counsel inquired of the County Auditor's office to discover that a decision had been issued months earlier. Petitioner never had notice on the four parcels referenced above, including the parcel which Kennecott owns, until July 19, 2002, again because Petitioner's counsel took the initiative to find out the status of such matters. The Board never notified Petitioner of its decision on a parcel that carried almost $100 million in assessed value.

In summary, the Board's notices are inadequate and do not provide Petitioner a meaningful opportunity to be heard. It would be unfair, in light of the circumstances, to deny Petitioner a right to appeal the Board's April 11, 2002 decision on the parcels at issue to the Utah State Tax Commission. Petitioner therefore respectfully requests that its appeal of the Board's decision be processed in the regular course of business. Petitioner also requests that all communications regarding this matter be sent to the undersigned counsel, not to Petitioner's headquarters in Minnesota, not to the United States of America, and not to Nuteam Pension and Profit Sharing Plan.

Please date stamp and return to me the extra copy of the enclosed Appeals.

Sincerely,

Parsons Behle & Latimer

Maxwell A. Miller

cc: Mary Ellen Sloan (via hand-delivery)
Bill Thomas Peters (via hand-delivery)
Judge Irene Rees, Utah State Tax Commission (via hand-delivery)

ADDENDUM
B

4/1

Salt Lake County Board Of Equalization

2001 Administrative Rules

Prepared by Tax Administration

July 10, 2001

to facilitate the appeal process.

1. The Assessor or Tax Administration may make an informal recommendation of value to the Board after an informal review. Upon approval and ratification, the Board shall make a proposed decision, and the Clerk will notify the applicant of the action, providing 30 days to appeal the proposed decision. The proposed decision shall become the Board's final decision if the applicant makes no petition for formal hearing.

2. If both parties agree and settle as to the value of a parcel bing appealed, a signed stipulation form may be submitted to the Board. The stipulation form will include a statement that signing the stipulation waives all further rights of appeal to the Board of Equalization, the State Tax Commission, or courts of competent jurisdiction.

V. HEARING

A. A hearing will be convened when:

1. A request for hearing is submitted by either party following the issuance of an informal or proposed decision of the Board.

2. The Board determines, after initial review of the application, that sufficient grounds exist to warrant a hearing.

B. Either party may waive the right to appear at a hearing.

C. Notice

1. The Clerk shall provide written notice of any hearing to both parties at least 10 working days prior to the hearing unless both parties agree to an earlier time, or unless otherwise provided by the Board.

2. All requests for notices to be sent to an address other than that listed on County records for the mailing of the tax notice must be made in writing to the Clerk of the Board.

3. Hearings may be convened during the time of application or initial review, if the application is complete and is accompanied by sufficient evidence.

4. Notice of a hearing shall not be sent to any party who has waived the right to appear at a hearing.

D. A hearing may be rescheduled for good cause as determined by the Clerk.

E. Failure to appear at a hearing after proper notice by the Clerk shall not be grounds to reopen the application or to schedule a new hearing.

F. A hearing shall be rescheduled where a party can establish insufficient notice or where proper standards or procedures have not been followed.

G. The hearing officer may grant a continuance, if the circumstances so warrant, under the following conditions:

1. Where the hearing officer has requested additional evidence from either party.

2. Where a legal issue not previously addressed has been raised.

H. Submission of Evidence

1. Evidence submitted for the appeal of a prior year's value will only be considered if resubmitted for the current year.

2. All evidence submitted after the initial filing of an application and before a scheduled hearing must be

VI. RESOLUTION

A Any stipulation or finding is subject to review and approval by Tax Administration prior to submission to the Board for final decision

B Findings

1 The hearing officer shall make and issue findings of fact and/or recommendations after consideration of evidence presented at a hearing, or after an informal review These findings of fact and/or recommendation shall be considered a finding for the purpose of UCA §59-2-1001

2 Recommendations pursuant to a preliminary review and prior to a hearing shall be considered a finding for the purpose of UCA §59-2-1001

3 In making findings based on an income approach to value, hearing officers may choose the individual elements of the calculation from whichever source they deem the best

C The Clerk of the Board shall place all findings, stipulations, and recommendations on an agenda to be transmitted to the Board for deliberation and ratification Findings may be pulled from the agenda by the Clerk as needed for corrections

D Final Decision

1 The Board shall make its decision upon approval of the findings before it

2 The Board may overrule any findings or make its own findings If reconsideration is requested directly of the County Council, the reconsideration review will be a review of the appeal record only and not a rehearing, unless otherwise determined by the Board The Clerk of the Board will place the matter on the Board of Equalization agenda noticing all parties 24 hours prior to the meeting

3 The Clerk shall issue a notice of the final decision

(a) Unless requested otherwise pursuant to V *Hearing*, C 2, a copy of the final decision shall be sent to the property owner of record, at the current address listed on the County records for the mailing of the tax notice

(b) The clerk may notify a party or agent of the Board's final decision upon request Such notification shall be provided according to procedures established by the Clerk

4 All decisions are subject to review by the Clerk to ensure that proper standards and procedures have been followed

VII. WITHDRAWAL

A Any party may request to withdraw an application by submitting a written petition to the Board of Equalization prior to a final decision

B Any party to an application may object to the withdrawal

C Any objections may be reviewed by Tax Administration with a recommendation forwarded to the Board The withdrawal will be granted unless the Board determines there is sufficient evidence to proceed to a hearing

VIII. PRIOR APPEAL

A Each tax year stands on its own with respect to application procedures

1 Properties with an appeal pending before the State Tax Commission or a court of competent jurisdiction must be appealed during the current year to preserve the right to appeal to the Board The